

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**In the Matter of the Application of
GENESIS SECURITIES, LLC and WILLIAM C. YEH,**

Petitioners,

**Pursuant to CPLR § 75013(b) to Stay an Arbitration
And**

WAYNE KULCHESKI and HARINDER TOOR,

Respondents.

**DECLARATION OF
HARINDER TOOR**

Docket No. 12-cv-4376 (SJF)

HARINDER TOOR declares, pursuant to 28 U.S.C. § 1746, the following:

1. I am a Respondent in the above-captioned proceeding, in which Petitioners Genesis Securities, LLC and William C. Yeh (collectively, "Genesis") seek an Order, pursuant to CPLR § 7503(b), staying an arbitration proceeding commenced by the Respondents against Petitioners before FINRA Dispute Resolution, Inc. entitled *Wayne Kulcheski and Harinder Toor v. Genesis Securities, LLC and William C. Yeh*, FINRA Arbitration No. 12-02555 (the "FINRA Arbitration"). As such, I am fully familiar with all of the facts and circumstances set forth herein. I submit this declaration in opposition to the Petition and in support of Respondents' motion for summary judgment.

2. I have read the Declaration of Wayne Kulcheski, dated August 30, 2012 ("Kulcheski Declaration"), which sets forth the facts and circumstances concerning the trading activities and accounts maintained by both Mr. Kulcheski and me at Genesis. Rather than repeat the contents of the Kulcheski Declaration in this declaration, I hereby incorporate the contents of the Kulcheski Declaration in this declaration, and affirm that the statements set forth therein are true and accurate.

3. As noted in the Kulcheski Declaration (at ¶¶ 31-32), in July 2008, our accounts and funds were moved by Genesis from Bear Capital to Regency Capital without our knowledge or

consent. Annexed hereto as Exhibit A is a true and complete copy of a Skype text transcript containing text messages exchanged between Bartosz Maczuga and me (using the username "Harry Blotter") on July 8, 2008. Mr. Maczuga was, at that time, one of our two primary contacts with Genesis and Bear Capital, and I communicated regularly with him in connection with our accounts. The transcript establishes that Mr. Maczuga informed me on that date that our accounts were being moved and, in connection therewith, a new account name and number were established in connection with these new accounts. Mr. Maczuga did not request that we sign any new agreements in connection with the transfer of these accounts. However, he did state that "new parameters" (i.e., trading rules and limits) had to be established for these accounts, which he could not establish on his own. Instead, Mr. Maczuga states that he needed to request those parameters from Genesis ("But the parameters have to be reset, I can't do them in my admin, I need to request [from Genesis]. They fudged that part up."). These statements by Mr. Maczuga demonstrate that these accounts were under the control of Genesis, since Mr. Maczuga needed to seek approval by Genesis before the parameters could be established in our new accounts.

4. On September 18, 2008, two months after Genesis transferred our accounts from Bear Capital to Regency Capital (without our knowledge or consent), I was involved in two trades in BIDU and CTRP. Both had large closing "buy imbalances." I initiated a short position on the imbalance price, with the goal of making a profit if the stock dropped in price in after-hours trading. Unfortunately, both of my sell short offers were executed one second before the close, causing me to short the stocks which then traded significantly higher on the imbalance buy. In the case of BIDU, I was short 2,000 shares at a price of approximately \$285 per share. On the imbalance, the stock was trading at \$300 per share, creating a paper loss of \$30,000.

5. Annexed hereto as Exhibit B is a true and complete copy of a Skype text chat between Mr. Maczuga and myself on September 18, 2008. In this conversation, I asked Mr. Maczuga if I could keep the BIDU shares in my Regency Capital account overnight, with the expectation that when the market opened on the following day, the shares would be trading closer to the \$285 price, enabling me to liquidate my position without the \$30,000 loss. The text transcript shows that Mr. Maczuga tells me he had to seek permission for me to hold the BIDU shares in my account overnight from Alex Kravets, the general manager of Genesis (who also managed Regency Capital). During this chat, Mr. Maczuga repeatedly states that Genesis was reluctant to permit me to hold the shares in the account overnight, although Genesis ultimately agreed to permit me to do so. Mr. Maczuga's statements referencing Genesis' control over my account, and decision to ultimately permit me to hold these shares overnight, include:¹

- 1:13 pm: Harry Blotter: "Got a problem here. Is it possible to hold them?"
Bartosz: "No shorts."
Harry Blotter: "What?"
Bartosz: "Let me talk to Kravets."
Harry Blotter: "Didn't Genesis rule that if they are on the easy to borrow we can hold overnight?"
Bartosz: "Let me talk to Kravets."
- 1:20 pm: Bartosz: "This is something I can't handle. I'm learning from Genesis."
Harry Blotter: "What are they saying?"
Bartosz: "For now they want you out."
- 1:23 pm: Harry Blotter: "You told me you were gonna' fix that."
Bartosz: "If we can make an exception. It's 600K short. No can do Harry. Gen don't want that risk."
Harry Blotter: "I realize that. I can't get out of this. They both printed up huge."
Bartosz: "Gen will hit you out."
Harry Blotter: "You have got to be kidding me!"

¹ For clarity, certain spelling and punctuation errors have been corrected in this quotation of the transcript.

Bartosz: "Still arguing. I'm trying, man. I got 11 ppl. stuck."

Harry Blotter: "Please get them to let me. I am very sorry but I can't take a hit this big."

- 1:25 pm: Bartosz: "I managed not to be short. So did 390 other ppl. I'm sorry too, but I don't know what to do. Genesis watches risk like crazy and they in the end monitor us. We get 4:1 and this is 600K short."
- 1:44 pm: Harry Blotter: "Bart, I appreciate that but it isn't good enough. Take my entire BP tomorrow. If there's a margin call I will pay for it."

Bartosz: "Still fighting. I'm here. Not going anywhere. Plz hold on."

Harry Blotter: "Ok."

Bartosz: "I'm walking to Genesis. Plz hold."

Harry Blotter: "Ok."

- 1:55 pm: Bartosz: "Close to making a deal."
- 1:59 pm: Bartosz: "I'm close."
- 2:03 pm: Bartosz: "Hold it [that is, permitting me to hold the stock in my account overnight]. Good luck."

Harry Blotter: "I am gonna' name my first son Bartosz."

Bartosz: "Good luck in the am."

Harry Blotter: "Thank you, Bart."

Bartosz: [Reference to Mr. Maczuga conversation with William Yeh].

6. My text conversation with Mr. Maczuga demonstrates that we were customers of Genesis, and that Genesis set the parameters of our accounts; actively managed risk in our accounts; made special exceptions regarding the parameters in our accounts; and, assumed risks for our trading.

7. As a result of the foregoing, your deponent respectfully asks the Court to deny the application for preliminary and permanent injunctive relief, to grant Respondents' motion for summary judgment and to dismiss the Petition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 30, 2012


Harinder Toor

EXHIBIT A

EXHIBIT B

Harry Blotter

Add video or write a message...
Personalize...
View account...

New

Search Contacts...

Contacts

Conversations

- Assaf
- Brander Back in BC
- Echo / Sound Test Service
- Eric P
- Jaan Tallinn (flagica)
- Jamie Hodge (heid)
- Joe
- Mikey BOS
- Mr Dack
- roger boucher
- Sammy J
- Stan
- Wallstreet
- Wayne
- Alex
- Allan
- Anna Davis
- Ballcock Nut
- Barry Lovie
- Bartosz Maczuga**
- bdcwhite
- BILLY THE BAD just to sa...
- Bryan B
- Bryon
- crossingtherubicon
- Dar
- Dave
- David Blaine, Street Magic...
- Dustin
- edzeppeli
- ellastrading
- Elli
- farooq.days
- foos

24,312,953 people online

Call...

Bartosz Maczuga

bmaczuga@bearcapital.com or call my cell @ 973-634-4855 or Kon @ 201-919-1176.
http://www.bearcapital.com
Thursday, September 03, 1981
English

Skype
Mobile
Office

Add a telephone number

Call
Video call

Check settings

im trying to find out

1:23 PM

Harry Blotter

you told me u were gonna fix that

1:23 PM

Bartosz

if we can make exception

1:23 PM

its 600k

1:24 PM

short

1:24 PM

no can do harry

1:24 PM

gen dont want that risk

1:24 PM

Harry Blotter

i realize that

1:24 PM

I cant get out of this

1:24 PM

they both printed up huge

1:24 PM

Bartosz

gen will hit you out

1:25 PM

Harry Blotter

you have got to be kidding me

1:25 PM

Bartosz

still arguing

1:26 PM

im trying man

1:26 PM

i got 11 ppl stuck

1:26 PM

Harry Blotter

please get them to let me

1:26 PM

i am very sorry but i cant take a hit this big

1:26 PM

Bartosz

what if its at 350

1:26 PM

tomorrow morning

1:26 PM

who will take 80 point hit

1:26 PM

on 2000 shares

1:26 PM

Harry Blotter

i will

1:26 PM

Bartosz

jesus man

1:27 PM

Harry Blotter

iem sorry man

1:28 PM

Bartosz

i dont need this

1:28 PM

why ?

1:28 PM

why ?

1:28 PM

Harry Blotter

sorry

1:28 PM

Bartosz

i managed not to be short

1:28 PM

so did 390

1:28 PM


other ppl

1:28 PM

im sorry too


1:28 PM

Harry Blotter



Add video or write a message...
Personalize
View account

Bartosz Maczuga



bmaczuga@bearcapital.com or call my cell @ 973-634-4855 or Kon @ 201-919-1176.
http://www.bearcapital.com
Thursday, September 03, 1981
2:07 AM Garfield / NYC, NJ / NY, United...
English

New
Search Contacts, ...


Skype
Mobile
Office
Add a telephone number

Call
Video call
Check settings

Contacts

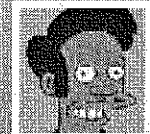
Assaf
Brander Back in BC
Echo / Sound Test Service
Eric P
Jaan Tallinn (flagica)
Jamie Hodge (heidyl)
Joe
Mikey BOS
Mr Dack
roger boucher
Sammy J
Stan
Wall\$treet
Wayne
Alex
Allan
Anna Davis
Ballcock Nut
Barry Lovie
Bartosz Maczuga (bmaczuga)
bdcwhite
BILLY THE BAD just to sa...
Bryan B
Bryon
crossingtherubicon
Dar
Dave
David Blaine, Street Magic...
Dustin
edzeppeli
eliasttrading
Elli
Farooq.daya
fooz

Conversations

Bartosz ctrp 1:47 PM
can u lose that> 1:47 PM
? 1:47 PM
Harry Blotter i can try real hard 1:47 PM
i am on the bid 1:47 PM
more than half out of ctrp 1:52 PM
Bartosz i saw 1:52 PM
Harry Blotter out of ctrp 1:55 PM
Bartosz close to making a deal 1:55 PM
Harry Blotter ty 1:55 PM
Bartosz jesus im lsoing years of my life 1:55 PM
hold 1:55 PM
couple more mins 1:55 PM
Harry Blotter sorry bart 1:55 PM
out of ctrp 1:56 PM
ooops 1:56 PM
Bartosz how much are u saving right now 1:59 PM
by not hitting out 1:59 PM
15 points 1:59 PM
2k 1:59 PM
30,000 1:59 PM
ok.. 1:59 PM
Harry Blotter basically 1:59 PM
on top of the 5k+ beating i took on ctrp 1:59 PM
Bartosz i'm close 1:59 PM
how much do you love bart? 2:02 PM
Harry Blotter  2:02 PM
Bartosz hold it 2:03 PM
good luck 2:03 PM
Harry Blotter i am gonan name my first born son Bartosz 2:03 PM
Bartosz good luck in the AM 2:03 PM
Harry Blotter thank you bart 2:03 PM

24,963,851 people online

Harry Blotter



Add video or
write a message...

Personalize

View account

Bartosz Maczuga



bmaczuga@bearcapital.com or call my cell @
973-634-4855 or Kon @ 201-919-1176.

<http://www.bearcapital.com>

Thursday, September 03, 1981

2:10 AM Garfield / NYC, NJ / NY, United...

English

New

Search Contacts...

Skype

Mobile

Office

Add a telephone number

Contacts

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- Mikey BOS
- Mr Dack
- roger boucher
- Sammy J
- Stan
- Wall\$treets
- Wayne
- Alex
- Allan
- Anna Davis
- Ballcock Nut
- Barry Lovie
- Bartosz Maczuga**
- bdcwhite
- BILLY THE BAD just to sa...
- Bryan B
- Bryon
- crossingtherubicon
- Dar
- Dave
- David Blaine, Street Magic...
- Dustin
- edzeppeli
- eliastading
- Eli
- farooq.daya
- fooz

Call

Video call

Check settings

Bartosz	close to making a deal	1:55 PM
Harry Blotter	ty	1:55 PM
Bartosz	jesus im Isoing years of my life	1:55 PM
	hold	1:55 PM
	couple more mins	1:55 PM
Harry Blotter	sorry bart	1:55 PM
	out of ctrp	1:56 PM
	ooops	1:56 PM
Bartosz	how much are u saving right now	1:59 PM
	by not hitting out	1:59 PM
	15 points	1:59 PM
	2k	1:59 PM
	30,000	1:59 PM
	ok..	1:59 PM
Harry Blotter	basically	1:59 PM
	on top of the 5k+ beating i took on ctrp	1:59 PM
Bartosz	i'm close	1:59 PM
	how much do you love bart?	2:02 PM
Harry Blotter		2:02 PM
Bartosz	hold it	2:03 PM
	good luck	2:03 PM
Harry Blotter	I am gonan name my first born son Bartosz	2:03 PM
Bartosz	good luck in the AM	2:03 PM
Harry Blotter	thank you bart	2:03 PM
Bartosz	im going to suck william's dick now	2:04 PM
	send me some mouthwash	2:04 PM
	im putting my ass on the line	2:04 PM
Harry Blotter	oh god	2:04 PM
	k i have to go	2:04 PM
Bartosz	we speak in the AM	2:05 PM